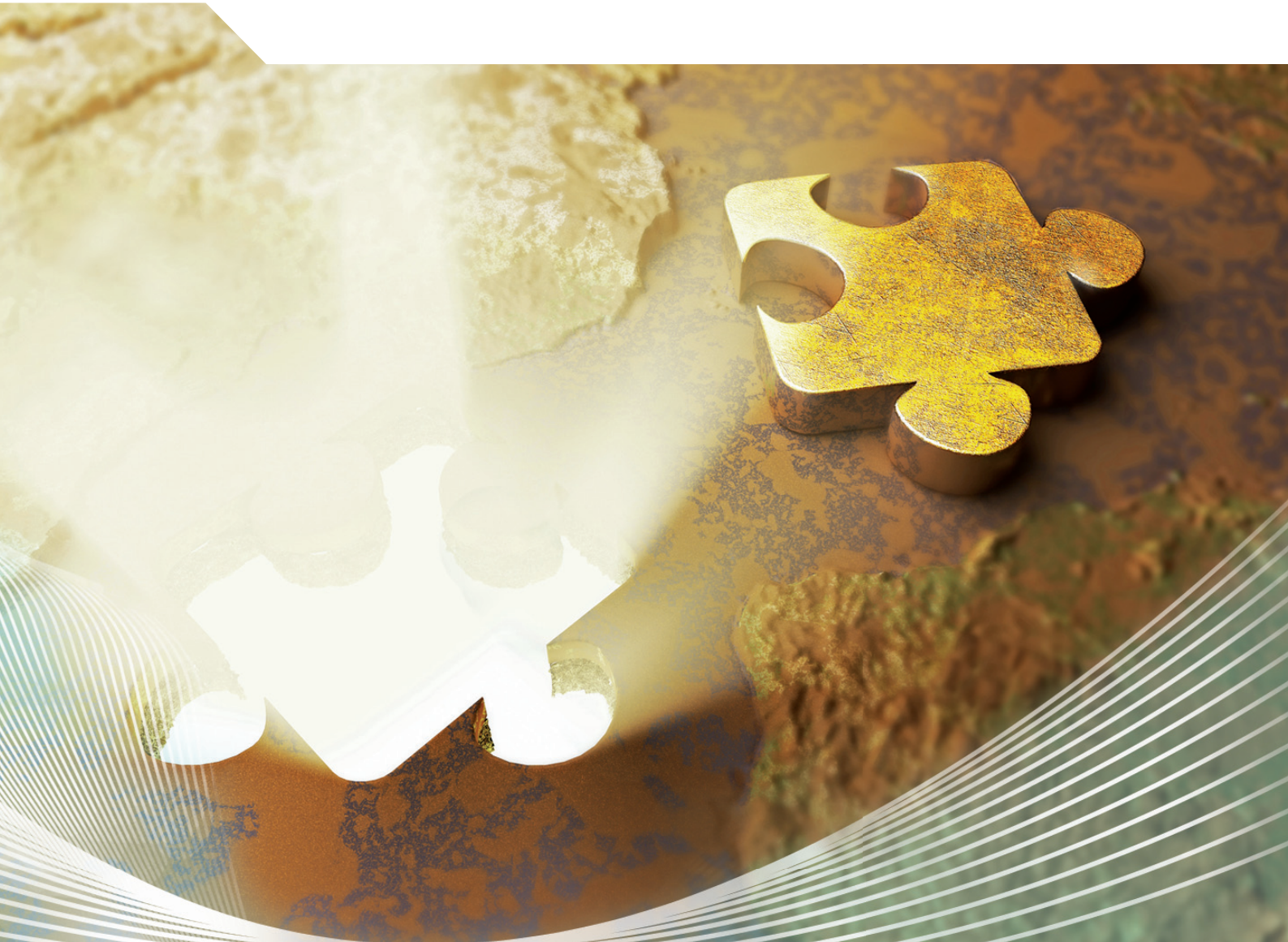




# OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas



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## Foreword

**T**he OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (“the Guidance”) is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. Its objective is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The Guidance is also intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their natural mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.

The Guidance was developed through a multi-stakeholder process with in-depth engagement from OECD and eleven countries of the International Conference on the Great Lakes Region (Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia), industry, civil society, as well as the United Nations. Three multi-stakeholder consultations were held, with two in Paris in December 2009 and April 2010 and a joint ICGLR-OECD consultation in Nairobi in September 2010 where Brazil, Malaysia and South Africa were also represented. As a result, the Guidance is practically-oriented, with emphasis on collaborative constructive approaches to complex challenges.

The United Nations Security Council resolution 1952 [S/RES/1952(2010)] supported taking forward the due diligence recommendations contained in the final report of the United Nations Group of Experts on the Democratic Republic of the Congo, which endorses and relies on the OECD Due Diligence Guidance.

The Guidance has been approved by the OECD Investment Committee and the OECD Development Assistance Committee, and has been endorsed by the eleven member states of the International Conference on the Great Lakes Region (ICGLR) in the Lusaka Declaration, adopted on 15 December 2010. An OECD Recommendation on the Due Diligence Guidance was adopted on 25 May 2011 at the OECD Ministerial Council Meeting. While not legally binding, the Recommendation would reflect the common position and political commitment of OECD members and non-members adhering to the OECD Declaration on International Investment and Multinational Enterprises.



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## **Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas\***

THE COUNCIL,

Having regard to Article 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Guidelines for Multinational Enterprises which form part of the Declaration on International Investment and Multinational Enterprises [C(2000)96/FINAL];

Recalling that the common aim of governments recommending the observance of the Guidelines for Multinational Enterprises and the development community is to promote principles and standards for responsible business conduct;

Observing that responsible sourcing of minerals has developmental and business dimensions;

Having regard to the Policy Framework for Investment adopted in 2006 [C(2006)68] which aims to mobilise private investment in a way which supports steady economic growth and sustainable development;

Recalling the work of the Development Assistance Committee in the field of international engagement in fragile states, aimed at avoiding harm when engaging in fragile and conflict-affected environments, including the Principles for Good International Engagement in Fragile States and Situations endorsed at its High Level Meeting on 3-4 April 2007;

Recalling the efforts of the international community to cooperate in the fight against corruption, including through the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption;

Recognising that governments, international organisations and companies can each draw on their respective competences and roles to contribute to ensuring that trade and investment in natural resources is beneficial to society at large;

Considering the efforts of the international community, in particular the International Conference on the Great Lakes Region, to combat illegal exploitation of natural resources in conflict-affected and high-risk areas;

\* At the time of adoption, Brazil made the following statement: "In adhering to the present Recommendation Brazil understands that the Due Diligence Guidance has been developed on the basis of the experience in the Great Lakes Region in Africa. Brazil is of the view that companies should take due account of relevant decisions by the United Nations, including resolutions of the UN Security Council, in determining if other zones of operation can be considered to be conflict-affected or high-risk areas".

Recognising that there is significant exploitation of natural mineral resources in conflict-affected and high-risk areas and that companies sourcing from or directly operating in those areas may face higher risk of contributing to conflict;

Noting that due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict;

Having regard to the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter “the Guidance”), developed in cooperation with the International Conference on the Great Lakes Region and approved by the Investment Committee and the Development Assistance Committee [C(2011)49/ADD1];

Having regard to the Supplement on Tin, Tantalum and Tungsten, which is an integral part of the Guidance, and noting that supplements on other minerals will be added to the Guidance in the future;

Noting that this Guidance sets out the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or relationships, while recognising that flexibility is needed in its application depending on individual circumstances and factors such as the size of the enterprise, the location of the activities, the situation in a particular country, the sector and nature of the products or services involved;

Recognising that the serious abuses associated with the extraction, transport or trade in minerals listed in Annex II<sup>1</sup>, especially when perpetrated against women and children, should not be tolerated;

On the proposal of the Investment Committee in enlarged session (including the non-member adherents to the Declaration on International Investment and Multinational Enterprises) and the Development Assistance Committee;

**RECOMMENDS** that members and non-member adherents to the Declaration on International Investment and Multinational Enterprises actively promote the observance of the Guidance by companies operating in or from their territories and sourcing minerals from conflict-affected or high-risk areas with the aim of ensuring that they respect human rights, avoid contributing to conflict and successfully contribute to sustainable, equitable and effective development;

**RECOMMENDS**, in particular, that members and non-member adherents to the Declaration on International Investment and Multinational Enterprises take measures to actively support the integration into corporate management systems of the 5-Step Framework for Risk-Based Due Diligence in the Mineral Supply Chain having due regard to the Model Supply Chain Policy set out respectively in Annexes I and II<sup>2</sup> to this Recommendation of which they form an integral part;

<sup>1</sup> The text of Annex II is reproduced on pages 18-21 of this publication.

<sup>2</sup> The text of Annexes I and II is reproduced on pages 16-21 of this publication.

**RECOMMENDS** that members and non-member adherents to the Declaration on International Investment and Multinational Enterprises, with the support of the OECD including through its activities with the United Nations and international development organisations, ensure the widest possible dissemination of the Guidance and its active use by other stakeholders including professional associations, financial institutions, and civil society organisations;

**INVITES** other non-members to take due account of and adhere to the present Recommendation;

**INSTRUCTS** the Investment Committee and the Development Assistance Committee to monitor the implementation of the Recommendation and to report to Council no later than three years following its adoption and as appropriate thereafter.



# **OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**

## Introduction

In conflict-affected and high-risk areas, companies involved in mining and trade in minerals have the potential to generate income, growth and prosperity, sustain livelihoods and foster local development. In such situations, companies may also be at risk of contributing to or being associated with significant adverse impacts, including serious human rights abuses and conflict.

This guidance provides a framework for detailed due diligence as a basis for responsible global supply chain management of tin, tantalum, tungsten, their ores and mineral derivatives, and gold<sup>1</sup> (hereafter “minerals”).<sup>2</sup> The purpose of this Guidance is to help companies respect human rights and avoid contributing to conflict through their sourcing decisions, including the choice of their suppliers. By doing so, this Guidance will help companies contribute to sustainable development and source responsibly from conflict-affected and high-risk areas, while creating the enabling conditions for constructive engagement with suppliers. This Guidance is intended to serve as a common reference for all suppliers and other stakeholders in the mineral supply chain and any industry-driven schemes which may be developed, in order to clarify expectations concerning the nature of responsible supply chain management of minerals from conflict-affected and high-risk areas.

### **Conflict-Affected and High-Risk Areas**

*Conflict-affected and high-risk areas* are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. *High-risk areas* may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law.

This Guidance is the result of a collaborative initiative among governments, international organisations, industry and civil society to promote accountability and transparency in the supply chain of minerals from conflict-affected and high-risk areas.

1. Gold supplement to be issued in 2011.
2. Metals reasonably assumed to be recycled are excluded from the scope of this Guidance. Recycled metals are reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing. Recycled metal includes excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold. Minerals partially processed, unprocessed or a bi-product from another ore are not recycled metals.

## What is due diligence in the mineral supply chain and why is it necessary?

Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict.<sup>3</sup> Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing the illicit trade in minerals and United Nations sanctions. Risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions.

For the purposes of this Guidance, “risks” are defined in relation to the potentially adverse impacts of a company’s operations, which result from a company’s own activities or its relationships with third parties, including suppliers and other entities in the supply chain. Adverse impacts may include harm to people (*i.e.* external impacts), or reputational damage or legal liability for the company (*i.e.* internal impacts), or both. Such internal and external impacts are often interdependent, with external harm coupled with reputational damage or exposure to legal liability.

A company assesses risk by identifying the factual circumstances of its activities and relationships and evaluating those facts against relevant standards provided under national and international law, recommendations on responsible business conduct by international organisations, government-backed tools, private sector voluntary initiatives and a company’s internal policies and systems. This approach also helps to scale the due diligence exercise to the size of the company’s activities or supply chain relationships.

Companies may face risks in their mineral supply chains because of circumstances of mineral extraction, trade or handling which by *their nature* have higher risks of significant adverse impacts, such as financing conflict or fuelling, facilitating or exacerbating conditions of conflict. In spite of the fragmented production process in the supply chain, and independent from their position or leverage over suppliers, companies are not insulated from the risk of contributing to or being associated with adverse impacts occurring at various points in the mineral supply chain. Because of this, companies

### The Mineral Supply Chain

The process of bringing a raw mineral to the consumer market involves multiple actors and generally includes the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing and sale of end product. The term supply chain refers to the system of all the activities, organisations, actors, technology, information, resources and services involved in moving the mineral from the extraction site downstream to its incorporation in the final product for end consumers.

should take reasonable steps and make good faith efforts to conduct due diligence to identify and prevent or mitigate any risks of adverse impacts associated with the conditions of mineral extraction and the relationships of suppliers operating in conflict-affected or high- risk areas.

3. OECD Guidelines for Multinational Enterprises (OECD, 2000); OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, (OECD, 2006) and Report of the UNSGSR “Protect, Respect and Remedy: a Framework for Business and Human Rights”, A/HRC/8/5 (7 April 2008).

In practice, due diligence is structured around the steps that companies should take to:

- identify the factual circumstances involved in the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing or selling of products that contain minerals originating from conflict-affected and high-risk areas;
- identify and assess any actual or potential risks by evaluating the factual circumstances against standards set out in the company's supply chain policy (see the Model Supply Chain Policy, Annex II);
- prevent or mitigate the identified risks by adopting and implementing a risk management plan. These may result in a decision to continue trade throughout the course of risk mitigation efforts, temporarily suspend trade while pursuing ongoing risk mitigation, or disengage with a supplier either after failed attempts at mitigation or where the company deems mitigation not feasible or the risks unacceptable.

### Who should carry out due diligence?

This Guidance applies to all companies in the mineral supply chain that supply or use tin, tantalum, tungsten and their ores or mineral derivatives and gold sourced from conflict-affected or high-risk areas. While implementation of due diligence should be tailored to particular company activities and relationships, such as their position in the supply chain, all companies should conduct due diligence aimed at ensuring that they do not contribute to human rights abuses or conflict.

This Guidance recognises that due diligence in conflict-affected and high-risk areas presents practical challenges. Flexibility is needed in the application of due diligence. The nature and extent of due diligence that is appropriate will depend on individual circumstances and be affected by factors such as the size of the enterprise, the location of the activities, the situation in a particular country, the sector and nature of the products or services involved. These challenges may be met in a variety of ways, including but not limited to:

- Industry-wide cooperation in building capacity to conduct due diligence.
- Cost-sharing within industry for specific due diligence tasks.
- Participation in initiatives on responsible supply chain management.<sup>4</sup>
- Coordination between industry members who share suppliers.
- Cooperation between upstream and downstream companies.
- Building partnerships with international and civil society organisations.
- Integrating the model supply chain policy (Annex II) and specific due diligence recommendations outlined in this Guidance into existing policies and management systems, due diligence practices of the company, such as procurement practices, integrity and know your customer due diligence measures and sustainability, corporate social responsibility or other annual reporting.

4. For example: *ITRI Supply Chain Initiative (iTSCi)*, (ITRI, June 2009); *Smelter Validation Scheme*, Electronic Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI); *Conflict Standard and Chain of Custody Standard*, World Gold Council (2010); and *Chain of Custody in the Diamond and Gold Jewellery Supply Chain*, Responsible Jewellery Council (2010); Global Reporting Initiative Supply Chain Working Group (2010).

In addition to providing the principles and processes for companies, this Guidance recommends due diligences processes and procedures that emerging industry-wide supply chain initiatives should meet as they work towards conflict-sensitive responsible sourcing practices, and may assist and complement the development and implementation of comprehensive certification schemes, such as the International Conference of the Great Region certification scheme and tools.<sup>5</sup>

## Structure of the guidance

This Guidance provides 1) an overarching due diligence framework for responsible supply chains of minerals from conflict-affected and high-risk areas (*see Annex I*); 2) a model mineral supply chain policy providing a common set of principles (*see Annex II*); 3) suggested measures for risk mitigation and indicators for measuring improvement which upstream companies may consider with the possible support of downstream companies (*see Annex III*); and 4) two Supplements on tin-tantalum-tungsten and gold<sup>6</sup> tailored to the challenges associated with the structure of the supply chain of these minerals. The Supplements contain specific due diligence recommendations articulated on the basis of companies' different positions and roles in their supply chains. Companies using these minerals, or their refined metal derivatives, should first consult the red flags listed in the introduction of each Supplement to determine if the due diligence processes described therein are applicable.

## Nature of the guidance

This Guidance builds on and is consistent with the principles and standards contained in the OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. It provides recommendations jointly addressed by governments to companies operating in or sourcing minerals from conflict-affected and high-risk areas, providing guidance on principles and due diligence processes for responsible supply chains of minerals from conflict-affected and high-risk areas, consistent with applicable laws and relevant international standards. Observance of this Guidance is voluntary and not legally enforceable.

5. See ICGLR *Regional Initiative against the Illegal Exploitation of Natural Resources*, [www.icglr.org](http://www.icglr.org).

6. Gold supplement to be issued in 2011.

## ANNEX I

## *Five-Step Framework for Risk-Based Due Diligence in the Mineral Supply Chain*

While specific due diligence requirements and processes will differ depending on the mineral and the position of the company in the supply chain (as detailed in the mineral Supplements), companies should review their choice of suppliers and sourcing decisions and integrate into their management systems the following five-step framework for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas:

1. **Establish strong company management systems.** Companies should:
  - A) Adopt, and clearly communicate to suppliers and the public, a company policy for the supply chain of minerals originating from conflict-affected and high-risk areas. This policy should incorporate the standards against which due diligence is to be conducted, consistent with the standards set forth in the model supply chain policy in Annex II.
  - B) Structure internal management to support supply chain due diligence.
  - C) Establish a system of controls and transparency over the mineral supply chain. This includes a chain of custody or a traceability system or the identification of upstream actors in the supply chain. This may be implemented through participation in industry-driven programs.
  - D) Strengthen company engagement with suppliers. A supply chain policy should be incorporated into contracts and/or agreements with suppliers. Where possible, assist suppliers in building capacities with a view to improving due diligence performance.
  - E) Establish a company-level, or industry-wide, grievance mechanism as an early-warning risk-awareness system.
2. **Identify and assess risk in the supply chain.** Companies should:
  - A) Identify risks in their supply chain as recommended in the Supplements.
  - B) Assess risks of adverse impacts in light of the standards of their supply chain policy consistent with Annex II and the due diligence recommendations in this Guidance.
3. **Design and implement a strategy to respond to identified risks.** Companies should:
  - A) Report findings of the supply chain risk assessment to the designated senior management of the company.

- B) Devise and adopt a risk management plan. Devise a strategy for risk management by either i) continuing trade throughout the course of measurable risk mitigation efforts; ii) temporarily suspending trade while pursuing ongoing measurable risk mitigation; or iii) disengaging with a supplier after failed attempts at mitigation or where a company deems risk mitigation not feasible or unacceptable. To determine the correct strategy, companies should review Annex II (*Model Supply Chain Policy for Responsible Global Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*) and consider their ability to influence, and where necessary take steps to build leverage, over suppliers who can most effectively prevent or mitigate the identified risk. If companies pursue risk mitigation efforts while continuing trade or temporarily suspending trade, they should consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, where appropriate, and agree on the strategy for measurable risk mitigation in the risk management plan. Companies may draw on the suggested measures and indicators under Annex III of the *Due Diligence Guidance* to design conflict and high-risk sensitive strategies for mitigation in the risk management plan and measure progressive improvement.
- C) Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management. This may be done in cooperation and/or consultation with local and central government authorities, upstream companies, international or civil society organisations and affected third-parties where the risk management plan is implemented and monitored in conflict-affected and high-risk areas.
- D) Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.
4. **Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain.** Companies at identified points (as indicated in the Supplements) in the supply chain should have their due diligence practices audited by independent third parties. Such audits may be verified by an independent institutionalised mechanism.
5. **Report on supply chain due diligence.** Companies should publicly report on their supply chain due diligence policies and practices and may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral supply chain due diligence.

## ANNEX II

## *Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas<sup>1</sup>*

Recognising that risks of significant adverse impacts which may be associated with extracting, trading, handling and exporting minerals from conflict-affected and high-risk areas, and recognising that we have the responsibility to respect human rights and not contribute to conflict, we commit to adopt, widely disseminate and incorporate in contracts and/or agreements with suppliers the following policy on responsible sourcing of minerals from conflict-affected and high-risk areas, as representing a common reference for conflict-sensitive sourcing practices and suppliers' risk awareness from the point of extraction until end user. We commit to refraining from any action which contributes to the financing of conflict and we commit to comply with relevant United Nations sanctions resolutions or, where applicable, domestic laws implementing such resolutions.

### **Regarding serious abuses associated with the extraction, transport or trade of minerals:**

1. While sourcing from, or operating in, conflict-affected and high-risk areas, we will neither tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of:
  - i) any forms of torture, cruel, inhuman and degrading treatment;
  - ii) any forms of forced or compulsory labour, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily;
  - iii) the worst forms of child labour;<sup>2</sup>
  - iv) other gross human rights violations and abuses such as widespread sexual violence;
  - v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.

1. This *Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas* is intended to provide a common reference for all actors throughout the entire mineral supply chain. Companies are encouraged to incorporate the model policy into their existing policies on corporate social responsibility, sustainability, or other alternative equivalent.
2. See ILO Convention No. 182 on the Worst Forms of Child Labour (1999).

**Regarding risk management of serious abuses:**

2. We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses as defined in paragraph 1.

**Regarding direct or indirect support to non-state armed groups:<sup>3</sup>**

3. We will not tolerate any direct or indirect support to non-state armed groups through the extraction, transport, trade, handling or export of minerals. "Direct or indirect support" to non-state armed groups through the extraction, transport, trade, handling or export of minerals includes, but is not limited to, procuring minerals from, making payments to or otherwise providing logistical assistance or equipment to, non-state armed groups or their affiliates who:<sup>4</sup>
  - i) illegally control mine sites or otherwise control transportation routes, points where minerals are traded and upstream actors in the supply chain;<sup>5</sup> and/or
  - ii) illegally tax or extort<sup>6</sup> money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded; and/or
  - iii) illegally tax or extort intermediaries, export companies or international traders.

**Regarding risk management of direct or indirect support to non-state armed groups:**

4. We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party providing direct or indirect support to non-state armed groups as defined in paragraph 3.

**Regarding public or private security forces:**

5. We agree to eliminate, in accordance with paragraph 10, direct or indirect support to public or private security forces who illegally control mine sites, transportation routes and upstream actors in the supply chain; illegally tax or extort money or minerals at point of access to mine sites, along transportation routes or at points where minerals are traded; or illegally tax or extort intermediaries, export companies or international traders.<sup>7</sup>

3. To identify non-state armed groups, companies should refer to relevant UN Security Council resolutions.
4. "Affiliates" includes négociants, consolidators, intermediaries, and others in the supply chain that work directly with armed groups to facilitate the extraction, trade or handling of minerals.
5. "Control" of mines, transportation routes, points where minerals are traded and upstream actors in the supply chain means i) overseeing extraction, including by granting access to mine sites and/or coordinating downstream sales to intermediaries, export companies or international traders; ii) making recourse to any forms of forced or compulsory labour to mine, transport, trade or sell minerals; or iii) acting as a director or officer of, or holding beneficial or other ownership interests in, upstream companies or mines.
6. "Extort" from mines, transportation routes, points where minerals are traded or upstream companies means the demanding, under the threat of violence or any other penalty, and for which the person has not voluntarily offered, sums of money or minerals, often in return for granting access to exploit the mine site, access transportation routes, or to transport, purchase, or sell minerals.
7. "Direct or indirect support" does not refer to legally required forms of support, including legal taxes, fees, and/or royalties that companies pay to the government of a country in which they operate (see paragraph 13 below on disclosure of such payments).

6. We recognise that the role of public or private security forces at the mine sites and/or surrounding areas and/or along transportation routes should be solely to maintain the rule of law, including safeguarding human rights, providing security to mine workers, equipment and facilities, and protecting the mine site or transportation routes from interference with legitimate extraction and trade.
7. Where we or any company in our supply chain contract public or private security forces, we commit to or we will require that such security forces will be engaged in accordance with the Voluntary Principles on Security and Human Rights. In particular, we will support or take steps, to adopt screening policies to ensure that individuals or units of security forces that are known to have been responsible for gross human rights abuses will not be hired.
8. We will support efforts, or take steps, to engage with central or local authorities, international organisations and civil society organisations to contribute to workable solutions on how transparency, proportionality and accountability in payments made to public security forces for the provision of security could be improved.
9. We will support efforts, or take steps, to engage with local authorities, international organisations and civil society organisations to avoid or minimise the exposure of vulnerable groups, in particular, artisanal miners where minerals in the supply chain are extracted through artisanal or small-scale mining, to adverse impacts associated with the presence of security forces, public or private, on mine sites.

### **Regarding risk management of public or private security forces:**

10. In accordance with the specific position of the company in the supply chain, we will immediately devise, adopt and implement a risk management plan with upstream suppliers and other stakeholders to prevent or mitigate the risk of direct or indirect support to public or private security forces, as identified in paragraph 5, where we identify that such a reasonable risk exists. In such cases, we will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation within six months from the adoption of the risk management plan.<sup>8</sup> Where we identify a reasonable risk of activities inconsistent with paragraphs 8 and 9, we will respond in the same vein.

### **Regarding bribery and fraudulent misrepresentation of the origin of minerals:**

11. We will not offer, promise, give or demand any bribes, and will resist the solicitation of bribes to conceal or disguise the origin of minerals, to misrepresent taxes, fees and royalties paid to governments for the purposes of mineral extraction, trade, handling, transport and export.<sup>9</sup>
8. As detailed in Step 3(D) of Annex I, companies should conduct an additional risk assessment on those risks requiring mitigation after the adoption of the risk management plan. If within six months from the adoption of the risk management plan there is no significant measurable improvement to prevent or mitigate the risk of direct or indirect support to public or private security forces, as identified in paragraph 5, companies should suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship.
9. See OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997); and the United Nations Convention Against Corruption (2004).

**Regarding money laundering:**

12. We will support efforts, or take steps, to contribute to the effective elimination of money laundering where we identify a reasonable risk of money-laundering resulting from, or connected to, the extraction, trade, handling, transport or export of minerals derived from the illegal taxation or extortion of minerals at points of access to mine sites, along transportation routes or at points where minerals are traded by upstream suppliers.

**Regarding the payment of taxes, fees and royalties due to governments:**

13. We will ensure that all taxes, fees, and royalties related to mineral extraction, trade and export from conflict-affected and high-risk areas are paid to governments and, in accordance with the company's position in the supply chain, we commit to disclose such payments in accordance with the principles set forth under the Extractive Industry Transparency Initiative (EITI).

**Regarding risk management of bribery and fraudulent misrepresentation of the origin of minerals, money-laundering and payment of taxes, fees and royalties to governments:**

14. In accordance with the specific position of the company in the supply chain, we commit to engage with suppliers, central or local governmental authorities, international organisations, civil society and affected third parties, as appropriate, to improve and track performance with a view to preventing or mitigating risks of adverse impacts through measureable steps taken in reasonable timescales. We will suspend or discontinue engagement with upstream suppliers after failed attempts at mitigation.<sup>10</sup>

10. As detailed in Step 3(D) of Annex I, companies should conduct an additional risk assessment on those risks requiring mitigation after the adoption of the risk management plan. If within six months from the adoption of the risk management plan there is no significant measurable improvement to prevent or mitigate the risks of bribery and fraudulent misrepresentation of the origin of minerals, money-laundering and payment of taxes, fees and royalties to governments, companies should suspend or discontinue engagement with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship.

## ANNEX III

## *Suggested Measures for Risk Mitigation and Indicators for Measuring Improvement*

### **SUPPLY CHAIN POLICY – SECURITY AND RELATED ISSUES**

#### **RISK MITIGATION:**

The following suggested risk mitigation measures may be considered for implementation by upstream companies individually or through associations, joint assessment teams or other suitable means to undertake the following activities:

- alert relevant central government authority (*e.g.* Ministry of Mines) of abusive and exploitative practices occurring in the supply chain;
- in areas in which minerals are illegally taxed or extorted, take immediate steps to ensure that upstream intermediaries and consolidators disclose downstream or publicly the payments made to public or private security forces for the provision of security;
- engage with intermediaries and consolidators to help build their capabilities to document the behaviour of security and payments to security forces;
- while sourcing from areas of artisanal and small-scale mining (“ASM”), support the formalisation of security arrangements between ASM communities, local government, and public or private security forces, in cooperation with civil society and international organisations, as appropriate, to ensure that all payments are freely made and proportionate to the service provided, clarify rules of engagement consistent with the Voluntary Principles on Security and Human Rights, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- support the establishment of community forums to share and communicate information;
- support the establishment of a trust or other similar fund, where appropriate, through which security forces are paid for their services;
- build partnership with international organisations or civil society organisations, as appropriate, to support capacity-building of security forces consistent with the Voluntary Principles on Security and Human Rights, on mine sites, and UN Code of Conduct for Law Enforcement Officials or the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

### SUPPLY CHAIN POLICY – SECURITY AND RELATED ISSUES (cont.)

For further guidance, see Multilateral Investment Guarantee Agency, *The Voluntary Principles on Security and Human Rights: An Implementation Toolkit for Major Sites* (2008); International Committee of the Red Cross – Training Resources for armed police and security personnel; and the *International Code of Conduct for Private Security Service Providers* (2010).

**RECOMMENDED INDICATORS FOR MEASURING IMPROVEMENT:** See, for example, Global Reporting Initiative, Indicator Protocols Set: Human Rights, Mining and Metals Sector Supplement (Version 3.0), indicator **HR8**: “Percentage of security personnel trained in the organisation’s policies or procedures concerning aspects of human rights that are relevant to operations”. For further descriptions of indicators, see the commentaries to the indicator. For guidance on reporting on indicators and compiling relevant information, including with regard to risks to communities and women see Global Reporting Initiative, Sustainability Reporting Guidelines and GRI Mining and Metals Sector Supplement (Version 3.0).

With regard to minerals originating from mines or transported along transportation routes where security forces are present, *the percentage of minerals or money, on a disaggregate per batch basis, illegally taxed or extorted from upstream actors by public or private security forces; the nature and type of payments to public or private security, including the nature and type of any arrangement on the provision of security and payment.*

### SUPPLY CHAIN POLICY – SECURITY AND EXPOSURE OF ARTISANAL MINERS TO ADVERSE IMPACTS

#### RISK MITIGATION:

When sourcing from areas of artisanal mining, the following suggested risk mitigation measures may be considered for implementation by upstream companies individually or through associations, joint assessment teams or other suitable means to undertake the following activities:

- minimise the risk of exposure of artisanal miners to abusive practices, by supporting host countries governments’ efforts for the progressive professionalization and formalisation of the artisanal sector, through the establishment of cooperatives, associations or other membership structures.

For further guidance on how to carry out this risk mitigation, see Responsible Jewellery Council, *Standards Guidance*, “COP 2.14 Artisanal and Small-Scale Mining”, including “supporting the wider community by locally sourcing the provision of as many goods and services as possible; eliminating child labour as a condition of engagement in the community; improving women’s conditions in ASM communities through gender awareness and empowerment programs.”

**RECOMMENDED INDICATORS FOR MEASURING IMPROVEMENT:** See, for example, Global Reporting Initiative, Indicator Protocols Set: Society, Mining and Metals Sector Supplement (Version 3.0), indicator **MM8**: “Number (and percentage) of [...] operating sites where artisanal and small-scale mining (ASM) takes place on, or adjacent to, the site; the associated risks and the actions taken to manage and mitigate these risks”. For further descriptions of indicators, see the commentaries to the indicator. For guidance on reporting on indicators and compiling relevant information, including risks to communities and women, see Global Reporting Initiative, Sustainability Reporting Guidelines and Mining and Metals Sector Supplement (Version 3.0).

### SUPPLY CHAIN POLICY – BRIBERY AND FRAUDULENT MISREPRESENTATION OF MINERALS ORIGIN

#### RISK MITIGATION:

Upstream companies may cooperate through associations, assessment teams or other suitable means to build capabilities of suppliers, in particular SMEs, to conduct due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.

**RECOMMENDED INDICATORS FOR MEASURING IMPROVEMENT:** Indicators for improvement should be based on the processes contained in the Guidance. For example, indicators may include *the information disclosed downstream; the nature of chain of custody or supply chain transparency system in place; the nature and form of supply chain risk assessments and management, in particular to verify information generated by chain of custody and transparency systems; the engagement of the company in capability training and/or other industry initiatives for supply chain due diligence.*

### SUPPLY CHAIN POLICY – MONEY LAUNDERING

#### RISK MITIGATION:

The following suggested risk mitigation measures may be considered for implementation by upstream companies individually or through associations, joint assessment teams or other suitable means to undertake the following activities:

- develop supplier, customer and transactional red flags to identify suspicious behaviour and activities;
- identify and verify the identity of all suppliers, business partners and customers;
- report suspicious behaviour of criminal activity to local, national, regional and international law enforcement agencies.

For further guidance, see Financial Action Task Force, Guidance on the risk-based approach to combating money laundering and terrorist financing.

**RECOMMENDED INDICATORS FOR MEASURING IMPROVEMENT:** Indicators for improvement should be based on the processes contained in the Guidance. For example, potential indicators may include *the supply chain policy; the information disclosed downstream, the nature of chain of custody or supply chain transparency system in place; the nature and form of supply chain risk assessments and management, in particular to verify information generated by chain of custody and transparency systems; the engagement of the company in capability training and/or other industry initiatives for supply chain due diligence.*

### **SUPPLY CHAIN POLICY – TRANSPARENCY ON TAXES, FEES AND ROYALTIES PAID TO GOVERNMENTS**

#### **RISK MITIGATION:**

The following suggested risk mitigation measures may be considered for implementation by upstream companies individually or through associations, assessment teams or other suitable means to undertake the following activities:

- support the implementation of the Extractive Industry Transparency Initiative;
- support the public disclosure, on a disaggregate basis, of all information on taxes, fees, and royalties that are paid to governments for the purposes of mineral extraction, trade, and export from conflict-affected and high-risk areas;
- inform relevant local and central governmental agencies of potential weaknesses in revenue collection and monitoring;
- support capability training of these agencies to effectively carry out their duties.

For a guide on how business can support EITI, see <http://eiti.org/document/businessguide>.

**RECOMMENDED INDICATORS FOR MEASURING IMPROVEMENT:** See, for example, Global Reporting Initiative, Indicator Protocols Set: Economic, Mining and Metals Sector Supplement (Version 3.0), indicator **EC1**: “Direct economic value generated and distributed, including revenues, operating costs, employee compensation, donations and other community investments, retained earnings, and payments to capital providers and governments”. For further descriptions of indicators, see the commentaries to the indicator. For guidance on reporting on indicators and compiling relevant information, see Global Reporting Initiative, Sustainability Reporting Guidelines and Mining and Metals Sector Supplement (Version 3.0).



# **Supplement on Tin, Tantalum and Tungsten**

## Scope and definitions

This Supplement provides specific guidance on supply chain due diligence of tin, tantalum and tungsten (hereinafter minerals) from conflict-affected or high-risk areas according to the different positions in the mineral supply chain. It distinguishes between the roles of and the corresponding due diligence recommendations addressed to *upstream companies* and *downstream companies* in the supply chain.

For the purposes of this Supplement, “upstream” means the mineral supply chain from the mine to smelters/refiners. “Upstream companies” include miners (artisanal and small-scale or large-scale producers),<sup>1</sup> local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners. The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* and this *Supplement on Tin, Tantalum and Tungsten* (hereafter “Guidance”), recommends, among other things, that these companies establish a system of internal control over the minerals in their possession (chain of custody or traceability) and establish on-the-ground assessment teams, which may be set up jointly through cooperation among upstream companies while retaining individual responsibility, for generating and sharing verifiable, reliable, up-to-date information on the qualitative circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risk areas. This Guidance calls on these upstream companies to provide the results of risk assessments to their downstream purchasers and have the smelters/refiners’ due diligence practices audited by independent third parties, including through an institutionalised mechanism.

“Downstream” means the minerals supply chain from smelters/refiners to retailers. “Downstream companies” include metal traders and exchanges, component manufacturers, product manufacturers, original equipment manufacturers (OEMs) and retailers. The Guidance recommends, among other things, that downstream companies identify, to the best of their efforts, and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to due diligence measures put forward in this Guidance. Downstream companies may participate in industry-wide schemes that assess smelters/refiners’ compliance with this Guidance and may draw on the information these schemes provide to help them fulfil the recommendations in this Guidance.

1. “Upstream companies” includes artisanal or small-scale producing enterprises, rather than individuals or informal working groups of artisanal miners.

This distinction reflects the fact that internal control mechanisms based on tracing minerals in a company's possession are generally unfeasible after smelting, with refined metals entering the consumer market as small parts of various components in end products. By virtue of these practical difficulties, downstream companies should establish internal controls over their immediate suppliers and may coordinate efforts through industry-wide initiatives to build leverage over sub-suppliers, overcome practical challenges and effectively discharge the due diligence recommendations contained in this Guidance.

### **Red flags triggering the application of this supplement**

This Guidance applies to actors operating in a conflict-affected and high-risk area, or potentially supplying or using tin (cassiterite), tantalum (tantallite) or tungsten (wolframite), or their smelted derivatives, from a conflict-affected and high-risk area. Companies should preliminarily review their mineral or metal sourcing practices to determine if the Guidance applies to them. The following red flags should trigger the due diligence standards and processes contained in this Guidance:

#### **Red flag locations of mineral origin and transit:**

- *The minerals originate from or have been transported via a conflict-affected or high-risk area.<sup>2</sup>*
- *The minerals are claimed to originate from a country that has limited known reserves, likely resources or expected production levels of the mineral in question (i.e. the declared volumes of mineral from that country are out of keeping with its known reserves or expected production levels).*
- *The minerals are claimed to originate from a country in which minerals from conflict-affected and high-risk areas are known to transit.*

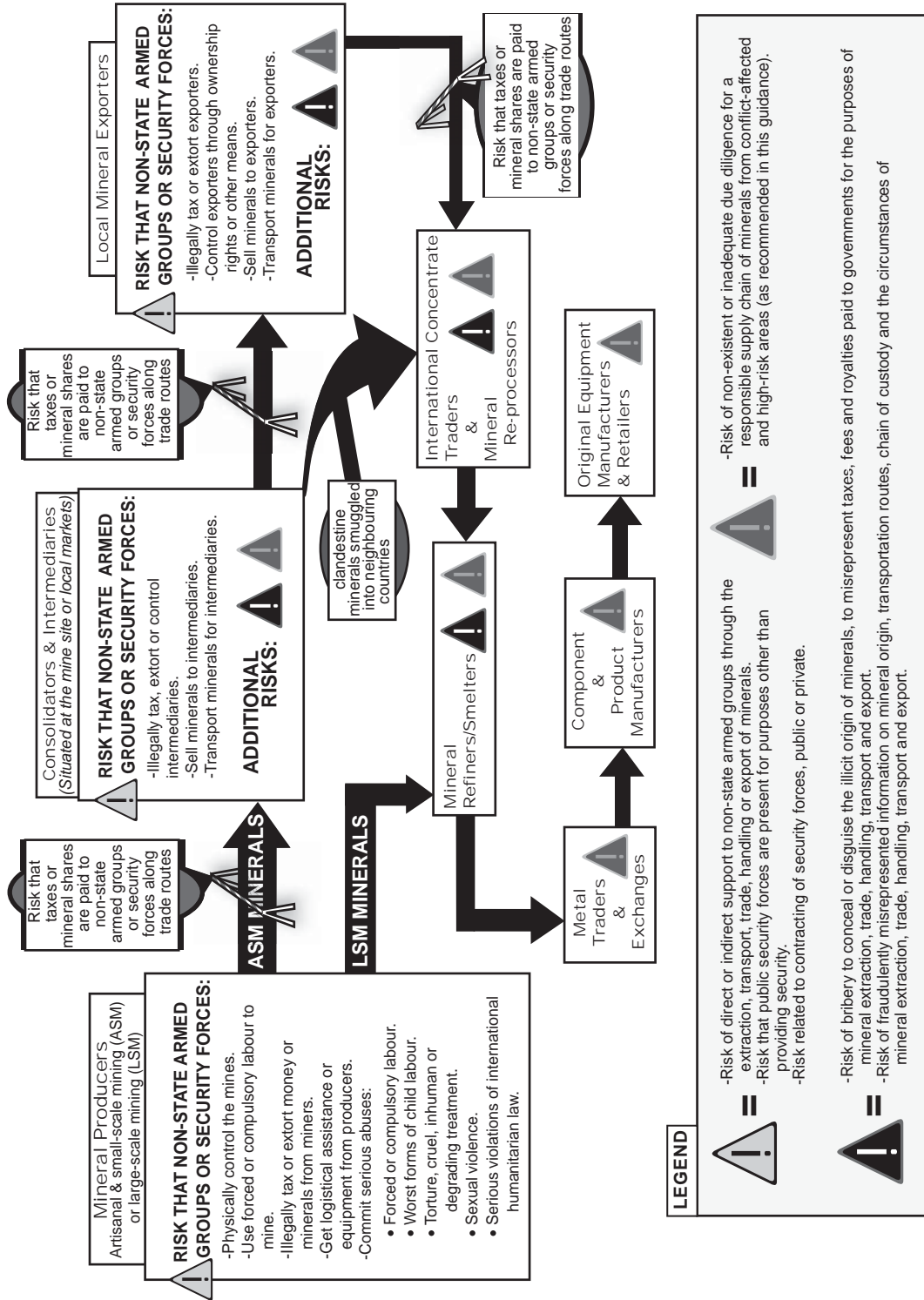
#### **Supplier red flags:**

- *The company's suppliers or other known upstream companies have shareholder or other interests in companies that supply minerals from or operate in one of the above-mentioned red flag locations of mineral origin and transit.*
- *The company's suppliers' or other known upstream companies are known to have sourced minerals from a red flag location of mineral origin and transit in the last 12 months.*

If a company in the supply chain is unable to determine whether the minerals in the company's possession come from a "red flag location of mineral origin or transit", it should proceed to Step 1 of the Guidance.

2. See Guidance for definition and indicators of conflict-affected and high-risk areas.

Figure 1. Risks in the supply chain of minerals from conflict-affected and high-risk areas



## STEP 1: ESTABLISH STRONG COMPANY MANAGEMENT SYSTEMS

**OBJECTIVE:** To ensure that existing due diligence and management systems within companies address risks associated with minerals from conflict affected or high-risk areas.

**A. Adopt and commit to a supply chain policy for minerals originating from conflict-affected and high-risk areas.** This policy, for all companies in the supply chain, should include:

1. A policy commitment setting forth principles for common reference on mineral extraction, transport, handling, trading, processing, smelting, refining and alloying, and export, against which the company will assess itself and the activities and relationships of suppliers. This policy should be consistent with the standards set forth in the model supply chain policy in Annex II.
2. A clear and coherent management process to ensure risks are adequately managed. The company should commit to the due diligence steps and recommendations outlined for the various levels identified in this Guidance.

**B. Structure internal management systems to support supply chain due diligence.** Companies in the supply chain should:

1. Assign authority and responsibility to senior staff with the necessary competence, knowledge and experience to oversee the supply chain due diligence process.
2. Ensure availability of resources necessary to support the operation and monitoring of these processes.<sup>3</sup>
3. Put in place an organisational structure and communication processes that will ensure critical information, including the company policy, reaches relevant employees and suppliers.
4. Ensure internal accountability with respect to the implementation of the supply chain due diligence process.

**C. Establish a system of controls and transparency over the mineral supply chain.**

### C.1. SPECIFIC RECOMMENDATIONS – For local mineral exporters

1. Collect<sup>4</sup> and disclose the following information to immediate downstream purchasers, who will then pass them down the supply chain, and to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas:

- a) all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals;
- b) any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals;

3. Art. 4.1 (d), ISO 9001:2008.

4. Due diligence is an on-going, proactive and reactive process, and therefore information may be collected and progressively built with the quality progressively improved through various steps in the Guidance, including through supplier communication [such as through contractual provisions or other processes described in Step 1(C) and Step 1(D)], through established chain of custody or transparency systems [see Step 1(C.4)], and through risk assessments [see Step 2(I) and Appendix: Guiding Note for Upstream Company Risk Assessment].

- c) all taxes and any other payments made to public or private security forces or other armed groups at all points in the supply chain from extraction onwards;
- d) the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers.
- e) the mine of mineral origin;
- f) quantity, dates and method of extraction (artisanal and small-scale or large-scale mining);
- g) locations where minerals are consolidated, traded, processed or upgraded;
- h) the identification of all upstream intermediaries, consolidators or other actors in the upstream supply chain;
- i) transportation routes.

**C.2. SPECIFIC RECOMMENDATIONS – For international concentrate traders and mineral re-processors:**

1. Incorporate the above disclosure requirements into commercial contracts with local exporters.<sup>5</sup>
2. Collect and disclose the following information to immediate downstream purchasers and to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas:
  - a) all export, import and re-export documentation, including records of all payments given for the purposes of export, import and re-export and all taxes and any other payments made to public or private security forces or other armed groups;
  - b) the identification of all immediate suppliers (local exporters);
  - c) all information provided by local exporter.

**C.3. SPECIFIC RECOMMENDATIONS – For smelters/refiners:**

1. Incorporate the above disclosure requirements into commercial contracts with international concentrate traders, mineral re-processors and local exporters.<sup>6</sup>
2. Maintain the information generated by the chain of custody and/or traceability system outlined below for a minimum of five years,<sup>7</sup> preferably on a computerised database and make it available to downstream purchasers and to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas.

5. It is the responsibility of the international concentrate trader to gain and maintain the information requested from local exporters regardless of whether exporters comply with the recommendations above.
6. It is the responsibility of the smelter/refiner to gain and maintain the information requested from international concentrate traders and local exporters regardless of whether they comply with the recommendations above.
7. See FATF Recommendation 10. Also see Annex II, Kimberley Process Certification Scheme and Kimberley Process Moscow Declaration.

**C.4. SPECIFIC RECOMMENDATIONS – For all upstream companies:**

1. Introduce a chain of custody and/or traceability system that generates the following information on a disaggregated basis for the minerals from a “red flag location of mineral origin and transit”, preferably supported by documentation: mine of mineral origin; quantity and dates of extraction; locations where minerals are consolidated, traded or processed; all taxes, fees, royalties or other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals; all taxes and other payments made to public or private security forces or other armed groups; identification of all actors in the upstream supply chain; transportation routes.<sup>8</sup>
2. Make all information gained and maintained pursuant to the due diligence standards and processes contained in this Guidance available to downstream purchasers and auditors and to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas.
3. Avoid, where practicable, cash purchases and ensure that all unavoidable cash purchases of minerals are supported by verifiable documentation and preferably routed through official banking channels.<sup>9</sup>
4. Support the implementation of the principles and criteria set forth under the Extractive Industry Transparency Initiative (EITI).<sup>10</sup>

**C.5. SPECIFIC RECOMMENDATIONS – For all downstream companies:**

1. Introduce a supply chain transparency system that allows the identification of the smelters/refiners in the company’s mineral supply chain through which the following information on the supply chain of minerals from “red flag locations of mineral origin and transit” should be obtained: the identification of all countries of origin, transport and transit for the minerals in the supply chains of each smelter/refiner. Companies which, due to their size or other factors, may find it difficult to identify actors upstream from their direct suppliers may engage and actively cooperate with industry members with whom they share suppliers or downstream companies with whom they have a business relationship to identify which smelters are in the supply chain.
  2. Maintain related records for a minimum of five years, preferably on a computerised database.
  3. Support extending digital information-sharing systems on suppliers<sup>11</sup> to include smelters/refiners, and adapt systems to assess supplier due diligence in the supply chain of minerals from conflict-affected and high-risk areas, utilizing the criteria and process recommended in this Guidance, with due regard to business confidentiality and other competitive concerns.<sup>12</sup>
8. See ITRI Supply Chain Initiative, in particular, the templates (Appendix 8, 9, 10) and Appendix 3, list of Relevant Documentation
  9. Financial institutions are encouraged to refer to this Guidance and supplement when undertaking customer due diligence for the purposes of providing their services and factor their compliance with this Guidance into their decision-making.
  10. For information on the EITI, see <http://eiti.org/>. For a guide on how business can support EITI, see <http://eiti.org/document/businessguide>.
  11. For example, see digital supplier information systems such as E-TASC: <http://e-tasc.com>
  12. Business confidentiality and other competitive concerns means price information and supplier relationships without prejudice to subsequent evolving interpretation. All information will be disclosed to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas.

**D. Strengthen company engagement with suppliers.** Companies in the supply chain should ensure that suppliers commit to a supply chain policy consistent with Annex II and the due diligence processes in this Guidance. In order to do this, the company should:

1. Establish, where practicable, long-term relationships with suppliers as opposed to short-term or one-off contracts in order to build leverage over suppliers.
2. Communicate to suppliers their expectations on responsible supply chains of minerals from conflict-affected and high-risk areas, and incorporate the supply chain policy and due diligence processes set out in this Guidance into commercial contracts and/or written agreements with suppliers which can be applied and monitored,<sup>13</sup> including, if deemed necessary, the right to conduct unannounced spot-checks on suppliers and have access to their documentation.
3. Consider ways to support and build capabilities of suppliers to improve performance and conform to company supply chain policy.<sup>14</sup>
4. Commit to designing measurable improvement plans with suppliers with the involvement, if relevant and where appropriate, of local and central governments, international organisations and civil society when pursuing risk mitigation.<sup>15</sup>

**E. Establish a company level grievance mechanism.** Depending on their position in the supply chain companies may:

1. Develop a mechanism allowing any interested party (affected persons or whistle-blowers) to voice concerns regarding the circumstances of mineral extraction, trade, handling and export in a conflict-affected and high-risk area. This will allow a company to be alerted of risks in its supply chain as to the problems in addition to the company fact and risk assessments.
2. Provide such a mechanism directly, or through collaborative arrangements with other companies or organisations, or by facilitating recourse to an external expert or body (i.e. ombudsman).

13. See steps 2-5 for information on monitoring suppliers and managing non-compliance.

14. See step 3, "Risk Mitigation".

15. See step 3, "Risk Mitigation".

## STEP 2: IDENTIFY AND ASSESS RISKS IN THE SUPPLY CHAIN

**OBJECTIVE:** To identify and assess risks on the circumstances of extraction, trading, handling and export of minerals from conflict-affected and high-risk areas.

### I. UPSTREAM COMPANIES

Upstream companies are expected to clarify chain of custody and the circumstances of mineral extraction, trade, handling and export and identify and assess risk by evaluating those circumstances against the model supply chain policy on minerals from conflict-affected and high-risk areas in Annex II. *Upstream companies may cooperate to carry out the recommendations in this section through joint initiatives. However, companies retain individual responsibility for their due diligence, and should ensure that all joint work duly takes into consideration circumstances specific to the individual company.*

#### A. Identify the scope of the risk assessment of the mineral supply chain.

Smelters/refiners, international concentrate traders and mineral re-processors should review information generated in Step 1 in order to target risk assessments on those minerals and suppliers triggered by the “red flag locations of mineral origin and transit” and “supplier red flags”, as listed in the introduction.

#### B. Map the factual circumstances of the company’s supply chain(s), under way and planned.

Upstream companies should assess the context of conflict-affected and high-risk areas; clarify the chain of custody, the activities and relationships of all upstream suppliers; and identify the locations and qualitative conditions of the extraction, trade, handling and export of the mineral. Upstream companies should rely on information collected and maintained through Step 1, and should gain and maintain up-to-date on-the-ground information in order to map the supply chain and assess risk effectively. See **Appendix: Guiding Note for Upstream Company Risk Assessments**, which contains guidance on establishing on-the-ground assessment teams (hereafter “assessment teams”) and includes a recommended list of questions for consideration. Assessment teams may be established jointly by upstream companies operating or supplying from conflict affected or high-risk areas. Upstream companies will remain individually responsible for following any of the recommendations put forward by assessment teams and acting on them.

#### C. Assess risks in the supply chain.

The company should assess the factual circumstances of the supply chain against the model supply chain policy on a qualitative basis to determine risks in the supply chain:

1. Review applicable standards, including:
  - a) The principles and standards of the company supply chain policy, consistent with Annex II.<sup>16</sup>
  - b) National laws of the countries where the company is domiciled or publicly-traded (if applicable); of the countries from which the minerals are likely to originate; and of transit or re-export countries.

16. See Step 1 (A) above and Annex II.

- c) Legal instruments governing company operations and business relations, such as financing agreements, contractor agreements, and supplier agreements.
  - d) Other relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, international human rights and humanitarian law.
2. Determine whether the circumstances in the supply chain (in particular, the answers to the recommended guiding questions outlined in the Appendix) meet the relevant standards. Any reasonable inconsistency between a factual circumstance and a standard should be considered a risk with potential adverse impacts.

## II. DOWNSTREAM COMPANIES

Downstream companies should identify the risks in their supply chain by assessing the due diligence practices of their smelters/refiners against this Guidance. Downstream companies who may find it difficult to identify actors upstream from their direct suppliers (due to their size or other factors), may engage and actively cooperate with other industry members with whom they share suppliers or downstream companies with whom they have a business relationship to carry out the recommendation in this section in order to identify the smelters/refiners in their supply chain and assess their due diligence practices or identify through industry validation schemes the refiners/ smelters that meet the requirements of this Guidance in order to source therefrom.<sup>17</sup> Downstream companies retain individual responsibility for their due diligence, and should ensure that all joint work duly takes into consideration circumstances specific to the individual company.

**A. Identify, to the best of their efforts, the smelters/refiners in their supply chain.** Downstream companies should aim to identify the mineral smelters/refiners that produce the refined metals used in their supply chain. This may be carried out through confidential discussions with the companies' immediate suppliers, through the incorporation of confidential supplier disclosure requirements into supplier contracts, by specifying to direct suppliers the smelters/refiners that meet the requirements of this Guidance, by using confidential information-sharing systems on suppliers and/or through industry wide schemes to disclose upstream actors in the supply chain.<sup>18</sup>

**B. Identify the scope of the risk assessment of the mineral supply chain.** After identifying the smelters/refiners that produce the refined metal used in their supply chain, downstream companies should engage with those smelters/refiners in their supply chains and obtain from them initial information on country of mineral origin, transit and transportation routes used between mine and smelters/refiners. Downstream companies should review this information and any information generated in Step 1 in order to target risk assessments on those minerals and suppliers triggered by the "red flag locations of mineral origin and transit" and "supplier red flags", as listed in the introduction.

17. See EICC and GeSI Refiner Validation Scheme.

18. See Step 1(C) ("Establish internal controls over the mineral supply chain") and Step 1 (D) above.

**C. Assess whether the smelters/refiners have carried out all elements of due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.**

1. Gain evidence on due diligence practices of the smelter/refiner.
2. Review the information generated by the assessment team.<sup>19</sup>
3. Cross-check evidence of due diligence practices of the smelter/refiner against the supply chain policy and due diligence processes contained in this Guidance.
4. Work with the smelter/refiner and contribute to finding ways to build capacity, mitigate risk and improve due diligence performance, including through industry-wide initiatives.

**D. Where necessary, carry out, including through participation in industry-driven programs, joint spot checks at the mineral smelter/refiner's own facilities.**

19. See Appendix: Guiding Note for Upstream Company Risk Assessment.

### STEP 3: DESIGN AND IMPLEMENT A STRATEGY TO RESPOND TO IDENTIFIED RISKS

**OBJECTIVE:** To evaluate and respond to identified risks in order to prevent or mitigate adverse impacts. Companies may cooperate to carry out the recommendations in this section through joint initiatives. However, companies retain individual responsibility for their due diligence, and should ensure that all joint work duly takes into consideration circumstances specific to the individual company.

**A. Report findings to designated senior management**, outlining the information gathered and the actual and potential risks identified in the supply chain risk assessment.

**B. Devise and adopt a risk management plan.** Companies should adopt a supply chain risk management plan that outlines the company responses to risks identified in Step 2. Companies may manage risk by either i) continuing trade throughout the course of measurable risk mitigation efforts; ii) temporarily suspending trade while pursuing ongoing measurable risk mitigation; or iii) disengaging with a supplier in cases where mitigation appears not feasible or unacceptable. To adopt the risk management plan and determine the correct risk management strategy, companies should:

1. Review the model supply chain policy on minerals from conflict-affected and high-risk areas in Annex II or their own internal policy if consistent with Annex II to determine whether the identified risks can be mitigated by continuing, suspending or terminating the relationship with suppliers.
2. Manage risks that do not require termination of the relationship with a supplier through measurable risk mitigation. Measurable risk mitigation should aim to promote progressive performance improvement within reasonable timescales. In devising a strategy for risk mitigation, companies should:
  - a) Consider, and where necessary take steps to build leverage over upstream suppliers who can most effectively prevent or mitigate the identified risk:
    - i) **UPSTREAM COMPANIES** – Depending on their position in the supply chain, upstream companies have significant actual or potential leverage over the actors in the supply chain who can most effectively and most directly mitigate the substantive risks of adverse impacts. If upstream companies decide to pursue risk mitigation while continuing trade or temporarily suspending trade, mitigation efforts should focus on finding ways to constructively engage, as appropriate, with relevant stakeholders with a view to progressively eliminating the adverse impacts within reasonable timescales.<sup>20</sup>
    - ii) **DOWNSTREAM COMPANIES** – Depending on their position in the supply chain, downstream companies are encouraged to build and/or exercise their leverage over upstream suppliers who can most effectively and most directly mitigate the risks of adverse impacts. Should downstream companies decide to pursue risk mitigation

20. Companies should refer to Annex II for the recommended risk management strategy. Annex III includes suggested measures for risk mitigation and some recommended indicators to measure improvement. More detailed guidance on risk mitigation is expected to come from the implementation phase of the Guidance.

while continuing trade or temporarily suspending trade, their mitigation efforts should focus on suppliers' value orientation and capability-training to enable them to conduct and improve due diligence performance. Companies should encourage their industry membership organisations to develop and implement due diligence capability-training modules in cooperation with relevant international organisations, NGOs, stakeholders and other experts.

- b) Consult with suppliers and affected stakeholders and agree on the strategy for measurable risk mitigation in the risk management plan. Measurable risk mitigation should be adjusted to the company's specific suppliers and the contexts of their operations, state clear performance objectives within a reasonable timeframe and include qualitative and/or quantitative indicators to measure improvement.
- i) **UPSTREAM COMPANIES** – Publish the supply chain risk assessment and the supply chain management plan, with due regard to business confidentiality and other competitive concerns,<sup>21</sup> and make them available to local and central authorities, upstream companies, local civil society and affected third parties. Companies should ensure sufficient time for affected stakeholders to review the risk assessment and management plan and respond to and take due account of questions, concerns and alternative suggestions for risk management.

**C. Implement the risk management plan, monitor and track performance of risk mitigation, report back to designated senior management and consider suspending or discontinuing engagement with a supplier after failed attempts at mitigation.**

1. **UPSTREAM COMPANIES** – Upstream companies should implement, monitor and track performance of risk mitigation in cooperation and/or consultation with local and central authorities, upstream companies, international or civil society organisations and affected third parties. Upstream companies may wish to establish or support the creation of community-monitoring networks to monitor or track performance of risk mitigation.

**D. Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.**<sup>22</sup> Supply chain due diligence is a dynamic process and requires on-going risk monitoring. After implementing a risk mitigation strategy, companies should repeat step 2 to ensure effective management of risk. Additionally, any change in the company's supply chain may require some steps to be repeated in order to prevent or mitigate adverse impacts.

21. See footnote 12.

22. A change of circumstances should be determined on a risk-sensitive basis through on-going monitoring of the companies' chain of custody documentation and the contexts of the conflict-affected areas of mineral origin and transport. Such change of circumstances may include a change of supplier or actor in the chain of custody, place of origin, transportation routes or point of export. It may also include factors specific to the context, such as an increase in conflict in specific areas, changes in military personnel overseeing an area and ownership or control changes in the mine of origin.

## **STEP 4: CARRY OUT INDEPENDENT THIRD-PARTY AUDIT OF SMELTER/REFINER'S DUE DILIGENCE PRACTICES**

**OBJECTIVE:** To carry out an independent third-party audit of the smelter/refiner's due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas and contribute to the improvement of smelter/refiner and upstream due diligence practices, including through any insitutionalised mechanism to be established at the industry's initiative, supported by governments and in cooperation with relevant stakeholders.

**A. Plan an independent third party audit of the smelter/refiner's due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.** The audit should include the following audit scope, criteria, principles and activities:<sup>23</sup>

1. **The scope of the audit:** The audit scope will include all activities, processes and systems used by the smelter/refiner to conduct supply chain due diligence of minerals from conflict-affected and high-risk areas. This includes, but is not limited to, smelter/refiner controls over the mineral supply chain, the information disclosed to downstream companies on suppliers, chain of custody and other mineral information, smelter/refiner risk assessments including the on-the-ground research, and smelter/refiner strategies for risk management.
2. **The audit criteria:** The audit should determine the conformity of the smelter/refiner due diligence process against the standards and processes of this due diligence Guidance.
3. **The audit principles:**
  - a) **Independence:** To preserve neutrality and impartiality of audits, the audit organisation and all audit team members ("auditors") must be independent from the smelter/refiner as well as from smelter/refiner's subsidiaries, licensees, contractors, suppliers and companies cooperating in the joint audit. This means, in particular, that auditors must not have conflicts of interests with the auditee including business or financial relationship with the auditee (in the form of equity holdings, debt, securities), nor have provided any other services for the auditee company, particularly any services relating to the due diligence practice or the supply chain operations assessed therein, within a 24 month period prior to the audit.<sup>24</sup>
  - b) **Competence:** Auditors should conform to the requirements set out in Chapter 7 of ISO 19011 on Competence and Evaluation of Auditors. Specifically, auditors must have knowledge and skills in the following areas:<sup>25</sup>
    - i) Auditing principles, procedures and techniques (ISO 19011).
    - ii) The supply chain due diligence principles, procedures and techniques of the company.
23. This recommendation outlines some basic principles, scope, criteria and other basic information for consideration for companies to commission a supply chain-specific independent third-party audit of the due diligence practices of smelters/refiners. Companies should consult ISO International Standard 19011: 2002 ("ISO 19011") for detailed requirements on audit programmes (including programme responsibilities, procedures, record-keeping, monitoring and reviewing) and a step-by-step overview of audit activities.
24. See Chapter VIII (A) of FLA Charter.
25. The requisite knowledge and skill can be determined by the auditor's education and work experience, as laid out in Chapter 7.4 of ISO 19011:2002. Auditors must also exhibit personal attributes of professionalism, impartiality, and honesty.

- iii) The organisational structure of the company's operations, particularly the company's mineral procurement and mineral supply chain.
- iv) The social, cultural and historical contexts of the conflict-affected areas of mineral origin or transport, including relevant linguistic abilities and culturally appropriate sensitivities for conducting audits.
- v) All applicable standards, including the model supply chain policy on minerals from conflict-affected and high-risk areas (Annex II).
- c) **Accountability:** Performance indicators may be used to monitor the ability of the auditors to carry out the audit in conformity with the audit programme, based on the objectives, scope and criteria of the audit, judged against audit programme records.<sup>26</sup>

#### 4. The audit activities:

- a) **Audit preparation:** The objectives, scope, language and criteria for the audit should be clearly communicated to the auditors with any ambiguities clarified between the auditee and auditors before the initiation of the audit.<sup>27</sup> The auditors should determine the feasibility of the audit based on the availability of time, resources, information and cooperation of relevant parties.<sup>28</sup>
- b) **Document review:** Samples of all documentation produced as part of the smelter/refiner's supply chain due diligence for minerals from conflict affected areas should be reviewed "to determine the conformity of the system, as documented, with audit criteria."<sup>29</sup> This includes, but is not limited to, documentation on supply chain internal controls (a sample of chain of custody documentation, payment records), relevant communications and contractual provisions with suppliers, documentation generated by company risk assessments (including all records on business partners and suppliers, interviews and on-the-ground assessments), and any documents on risk management strategies (e.g. agreements with suppliers on improvement indicators).
- c) **In-site investigations:** Before beginning the in-site investigations, auditors should prepare an audit plan,<sup>30</sup> and all working documents.<sup>31</sup> The evidence from smelter/refiner supply chain risk assessments and smelter/refiner supply chain risk management should be verified. Auditors should gather further evidence and verify information by conducting relevant interviews, making observations and reviewing documents.<sup>32</sup> In-site investigations should include:
  - i) **The smelter/refiner facilities** and sites where the smelter/refiner carry out due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.
  - ii) **A sample of the smelter/refiner's suppliers** (both international concentrate traders, re-processors and local exporters), which includes supplier facilities.
  - iii) **A meeting with the assessment team** (see Appendix) to review the standards and methods for generating verifiable, reliable and up-to-date information, and audit a

26. See Chapter 5.6 of ISO 19011.

27. See Chapter 6.2 of ISO 19011.

28. *Ibid.*

29. See 6.3 of ISO 19011.

30. See 6.4.1 of ISO 19011.

31. See 6.4.3 of ISO 19011.

32. Art. 6.5.4 of ISO 19011.

sample of evidence relied upon by the smelter/refiner while carrying out due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas. In preparation for the meeting, auditors should request information and submit questions to the on-the-ground assessment team.

- iv) **Consultations with local and central governmental authorities, UN expert groups, UN peacekeeping missions and local civil society.**
- d) **Audit Conclusions:** Auditors should generate findings that determine, based on the evidence gathered, the conformity of the smelter/refiner due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas with this Guidance. Auditors should make recommendations in the audit report for the smelter/refiner to improve their due diligence practices.

## **B. Implement the audit in accordance with the audit scope, criteria, principles and activities set out above.**

1. **IMPLEMENTATION OF THE AUDIT.** Under current circumstances, all actors in the supply chain should cooperate through their industry organisations to ensure that the auditing is carried out in accordance with audit scope, criteria, principles and activities listed above.
  - a) **SPECIFIC RECOMMENDATIONS – For local mineral exporters**
    - i) Allow access to company sites and all documentation and records of supply chain due diligence.
    - ii) Facilitate safe access to on-the-ground assessment team. Coordinate logistics to provide a safe meeting point for audit teams and the on-the-ground assessment team.
  - b) **SPECIFIC RECOMMENDATIONS – For international concentrate traders and mineral re-processors**
    - i) Allow access to company sites and all documentation and records of supply chain due diligence.
  - c) **SPECIFIC RECOMMENDATIONS – For smelters/refiners**
    - i) Allow access to company sites and all documentation and records of supply chain due diligence.
    - ii) Facilitate contact with the sample of suppliers selected by the audit team.
  - d) **SPECIFIC RECOMMENDATIONS – For all downstream companies**
    - i) It is recommended that all downstream companies participate and contribute through industry organisations or other suitable means to appoint auditors and define the terms of the audit in line with the standards and processes set out in this Guidance. Small and medium enterprises are encouraged to join or build partnerships with such industry organisations.
2. **INSTITUTIONALISED MECHANISM FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT AFFECTED AND HIGH-RISK AREAS.** All actors in the supply chain, in cooperation and with the support of governments and civil society, may consider incorporating the audit scope, criteria, principles and activities set out above into an institutionalized mechanism that would oversee and support the implementation of due

diligence for responsible supply chains of minerals from conflict-affected and high- risk areas. The institution should carry out the following activities:

- a) With regard to audits:
  - i) Accrediting auditors;
  - ii) Overseeing and verifying audits;
  - iii) Publishing audit reports with due regard to business confidentiality and competitive concerns.<sup>33</sup>
- b) Develop and implement modules to build capabilities of suppliers to conduct due diligence and for suppliers to mitigate risk.
- c) Receive and follow-up on grievances of interested parties with the relevant company.

33. See footnote 12.

## STEP 5: REPORT ANNUALLY ON SUPPLY CHAIN DUE DILIGENCE

**OBJECTIVE:** To publicly report on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas in order to generate public confidence in the measures companies are taking.

**A. Annually report or integrate, where practicable, into annual sustainability or corporate responsibility reports, additional information on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.**

### A.1. SPECIFIC RECOMMENDATIONS – For all upstream companies

1. *Company Management Systems:* Set out the company's supply chain due diligence policy; explain the management structure responsible for the company's due diligence and who in the company is directly responsible; describe the control systems over the mineral supply chain put in place by the company, explaining how this operates and what data it has yielded that has strengthened the company's due diligence efforts in the reporting period covered; describe the company's database and record-keeping system and explain the methods for disclosing all suppliers, down to the mine of origin, to downstream actors; disclose information on payments made to governments in line with EITI criteria and principles.
2. *Company risk assessment in the supply chain:* Publish the risk assessment with due regard taken of business confidentiality and other competitive concerns.<sup>34</sup> Outline the methodology, practices and information yielded by the on-the-ground assessment; explain the methodology of company supply chain risk assessments.
3. *Risk management:* Describe the steps taken to manage risks, including a summary report on the strategy for risk mitigation in the risk management plan, and capability-training, if any, and the involvement of affected stakeholders. Disclose the efforts made by the company to monitor and track performance.

### A.2. SPECIFIC RECOMMENDATIONS – For smelters/refiners

1. *Audits:* Publish the audit reports of smelters/refiners with due regard taken of business confidentiality and other competitive concerns.<sup>35</sup>

34. Business confidentiality and other competitive concerns means price information and supplier relationships without prejudice to subsequent evolving interpretation. All information will be disclosed to any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas.

35. See footnote 34.

**A.3. SPECIFIC RECOMMENDATIONS – For all downstream companies**

1. *Company Management Systems*: Set out the company's supply chain due diligence policy; explain the management structure responsible for the company's due diligence and who in the company is directly responsible.
2. *Risk assessment and management*: Describe the steps taken to identify smelters/refiners in the supply chain and assess their due diligence practices, including the published list of qualified smelters/refiners through industry validation schemes conforming to the due diligence processes recommended in this Guidance. Describe the steps taken to manage risks.
3. *Audits*: Publish the audit reports of their due diligence practices, with due regard taken of business confidentiality and other competitive concerns<sup>36</sup> and responses to identified risks.

36. See footnote 34.

## APPENDIX

*Guiding Note for Upstream Company Risk Assessment*

**A. Create enabling conditions for an effective risk assessment.** When planning and structuring the supply chain risk assessment, upstream companies in the supply chain should take into account the following recommended actions:

1. **Use an evidence-based approach.** Conclusions of the company risk assessment should be corroborated by verifiable, reliable, up-to-date evidence, which should be gained through on-the-ground research carried out by an on-the ground assessment team.
2. **Preserve the reliability and quality of company fact and risk assessment of a supply chain,** by ensuring that company assessors are independent from the activity being assessed and free from conflict of interests.<sup>37</sup> Company assessors must commit to reporting truthfully and accurately and upholding the highest professional ethical standards and exercise “due professional care”.<sup>38</sup>
3. **Ensure the appropriate level of competence,** by employing experts with knowledge and skill in as many of the following areas: the operational contexts assessed (*e.g.* linguistic abilities, cultural sensitivities), the substance of conflict-related risks (*e.g.* the standards in , human rights, international humanitarian law, corruption, financial crime, conflict and financing parties to a conflict, transparency), the nature and form of the mineral supply chain (*e.g.* mineral procurement), and the standards and process contained in this due diligence Guidance.

**B. Establish an on-the-ground assessment team (hereafter “assessment team”) in the conflict-affected and high-risk areas of mineral origin and transit to generate and maintain information on suppliers and the circumstances of mineral extraction, trade, handling and export.** Upstream companies may establish such a team jointly in cooperation with other upstream companies supplying from, or operating in these areas (“cooperating companies”).

1. Upstream companies establishing the assessment team should:
  - a) Ensure the assessment team consults with local and central governments to gain information, with a view of strengthening cooperation and opening avenues of communication between government institutions, civil society and local suppliers.
  - b) Ensure the assessment team regularly consults with local civil society organisations with local knowledge and expertise.

37. Art 4, ISO 19011:2002

38. Art 4, ISO 19011:2002

- c) Establish or support the creation, where appropriate, of community-monitoring networks to feed information into the assessment team.
  - d) Share information gained and maintained by the assessment team throughout the entire supply chain, preferably through a computerized system with web accessibility for companies in the supply chain and any institutionalised mechanism, regional or global, once in place with the mandate to collect and process information on minerals from conflict-affected and high-risk areas.
2. Upstream companies establishing the assessment team should define the scope and capacities of the on-the-ground assessment team to undertake the following activities:
- a) Obtain first-hand evidence of the factual circumstances of mineral extraction, trade, handling and export. This includes:
    - i) **The militarisation of mine sites, transportation routes and points where minerals are traded.** The assessment team should track the militarisation of mine sites, transportation routes and points where minerals are traded. Interactive maps which indicate the location of mines, armed groups, trade routes, roadblocks and airfields can constitute an additional source of information for companies.<sup>39</sup> Tracking the militarisation of mines, transportation routes and points where minerals are traded means identifying factual circumstances resulting in direct or indirect support to non-state armed groups and public or private security forces (as defined in the model supply chain policy in Annex II).
    - ii) **Serious abuses associated with the extraction, transport or trade of minerals (as defined in the model supply chain policy in Annex II) committed by public or private security forces, non-state armed groups or other third parties operating in mining areas, along transportation routes or points where minerals are traded.**
  - b) Respond to specific questions or requests for clarifications made by cooperating companies and put forward recommendations for the company risk assessment and risk management. All cooperating companies may put forward questions to, or request clarifications from, the on-the-ground assessment team on the following:<sup>40</sup>
    - i) Evidence generated by the traceability and chain of custody system [Step 1 (C)] and the risk assessment [Step 2].
    - ii) Information on suppliers (intermediaries and exporters) in line with “Know your customer/supplier” protocols, such as those implemented through anti-money laundering compliance systems.<sup>41</sup>
  - c) Receive and assess grievances voiced by interested parties on the ground and communicate to cooperating companies.

### **B.1. SPECIFIC RECOMMENDATIONS – For local exporters**

1. Facilitate local logistics for the assessment team, responding to any requests for assistance.
2. Facilitate assessment team’s access to all upstream intermediaries, consolidators and transporters.

39. Such as DRC Map, US Department of State Map, IPIS map.

40. Questions and clarifications should be recorded and feed into information systems for future use, monitoring and updating, jointly accessible by cooperating companies.

41. See, Financial Action Task Force, Guidance on the risk-based approach to combating money laundering and terrorist financing, June 2007, Section 3.10.

3. Allow the assessment team access to all company sites, including in neighbouring countries or other countries where trans-shipment or relabeling is likely, as well as all books, records or other evidence of procurement practices, tax, fee and royalty payments, and export documentation.
4. Allow the assessment team access to all information gained and maintained as part of the company's due diligence practices, including payments made to non-state armed groups and public or private security forces.
5. Identify relevant personnel to act as contact points for the assessment team.

### **B.2. SPECIFIC RECOMMENDATIONS – For international concentrate traders and mineral re-processors**

1. Facilitate assessment team's access to all cross-border transporters, allowing them to join cross-border transportation of minerals on an unannounced basis.
2. Allow assessment teams access to all sites owned by the international concentrate traders and mineral re-processors in neighbouring countries or other countries where trans-shipment or relabeling is likely for minerals from conflict-affected and high-risk areas or where leakages in the supply chain are known or likely to exist.
3. Allow assessment team access to all books, records or other evidence of procurement practices, tax, fee and royalty payments, and export documentation.
4. Allow the assessment team access to all information gained and maintained as part of the company's due diligence practices, including payments made to non-state armed groups and public or private security forces.
5. Proactively provide assessment team with records of minerals from other red flag locations of mineral origin and transit.
6. Identify relevant personnel to act as contact points for the assessment team.

### **B.3. SPECIFIC RECOMMENDATIONS – For smelters/refiners**

1. Identify relevant personnel to act as contact points for the assessment team.
2. Allow assessment team access to all books, records or other evidence of procurement practices, tax, fee and royalty payments, and export documentation.
3. Allow the assessment team access to all information gained and maintained as part of the company's due diligence practices.

### **C. RECOMMENDED QUESTIONS THAT COMPANY ASSESSMENTS SHOULD ANSWER:** These questions relate to common circumstances found in the supply chain of tin, tantalum, tungsten, their ores and metal derivatives which give rise to risks.

1. **Know the context of the conflict-affected and high-risk area of mineral origin, transit and/or export**
  - a) Study profiles on the conflict-affected and high-risk areas of origin, neighbouring and transit countries (including potential transportation routes and the locations of extraction, trade, handling, and export). Relevant information will include public reports (from governments, international organisations, NGOs, and media), maps, UN reports and UN Security Council sanctions, industry literature relating to mineral extraction, and its impact on conflict, human rights or environmental harm in the country of potential origin, or other public statements (e.g. from ethical pension funds).

- b) Are there international entities capable of intervention and investigation, such as UN peacekeeping units, based in or near the area? Can these systems be used to identify actors in the supply chain? Are there local means for recourse to address concerns related to the presence of armed groups or other elements of conflict? Are relevant national, provincial, and/or local regulatory agencies with jurisdiction over mining issues capable of addressing such concerns?

**2. Know your suppliers and business partners<sup>42</sup>**

- a) Who are the suppliers or other parties involved in financing, extracting, trading and transporting the minerals between point of extraction and the point at which the company undertaking the due diligence takes custody of the minerals? Identify all significant actors in the supply chain, collecting information on ownership (including beneficial ownership), corporate structure, the names of corporate officers and directors, the ownership interests of the company or officers in other organisations, the business, government, political or military affiliations of the company and officers (in particular, focusing on potential relationships with non-state armed groups or public or private security forces).<sup>43</sup>
- b) What procurement and due diligence systems do these suppliers have in place? What supply chain policies have suppliers adopted and how have they integrated them into their management processes? How do they establish internal controls over minerals? How do they enforce policies and conditions on their suppliers?

**3. Know the conditions of mineral extraction in conflict affected and high-risk areas**

- a) What is the exact origin of the minerals (what are the specific mines)?
- b) What was the method of extraction? Identify if minerals were extracted through artisanal and small-scale mining (“ASM”) or large-scale mining, and if through ASM, identify, where possible, whether extracted by individual artisanal miners, artisanal mining cooperatives, associations, or small enterprises. Identify the taxes, royalties and fees paid to government institutions, and the disclosures made on those payments.
- c) Do conditions of extraction involve the presence and involvement of non-state armed groups or public or private security forces, including in one or more of the following: direct control of the mine or transportation routes around mine; levying of taxes on miners or extortion of minerals; beneficial or other ownership interests in the mine site or mineral rights by non-state armed groups or public or private security forces and/or their families and/or associates; engagement in mining as a second income when “off duty”; or provision of security paid by miners or through taxes arising from production. Do any of these armed groups or military units have an involvement or interest in the conflict? Do any of them have a history of involvement in widespread human rights abuses or other crimes?
- d) What are the conditions of extraction? In particular, identify if there are i) any forms of torture, cruel, inhuman and degrading treatment exacted for the purposes of mineral extraction; ii) any forms of forced or compulsory labour which means work or service which is exacted from any person under the menace of penalty and for which

42. See Financial Action Task Force, *Guidance on the risk-based approach to combating money laundering and terrorist financing*, June 2007, Section 3.10. See Step 2.

43. See Chapter VI of *Guidelines on reputational due diligence*, International Association of Oil and Gas Producers (Report No. 356, 2004). See also Chapter 5 “Knowing Clients and Business Partners” of the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*, 2006.

said person has not offered himself voluntarily; iii) the worst forms of child labour for the purposes of mineral extraction; iv) other gross human rights violations and abuses such as widespread sexual violence on mine sites or in the course of mineral extraction; or v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.

**4. Know the conditions of mineral transport, handling and trade in conflict affected and high-risk areas**

- a) Were downstream purchasers situated at the mine site or elsewhere? Were the minerals from different miners handled and processed separately and kept separate when sold downstream? If not, at what point were the minerals processed, consolidated and mixed when sold downstream?
- b) Who were the intermediaries that handled the minerals? Identify whether any of those intermediaries have been reported or suspected to be extracting or trading minerals associated with non-state armed groups.
- c) To what extent, if any, are public or private security forces or non-state armed groups directly or indirectly involved in the trading, transportation or taxing of the minerals? Are the public or private security forces or non-state armed groups benefiting in any way from the trading, transporting or taxing of minerals being carried out by other parties, including through affiliations with intermediaries or exporters?
- d) To what extent, if any, are the public or private security forces or non-state armed groups present along trade and transportation routes? Are there any human rights abuses occurring in trading, transportation or taxing of the minerals? For example, is there evidence of forced labour, extortion or coercion being used? Is child labour being used? In particular, identify if there are i) any forms of torture, cruel, inhuman and degrading treatment exacted for the purposes of mineral transport or trade; ii) any forms of forced or compulsory labour to mine, transport, trade or sell minerals; iii) the worst forms of child labour for the purposes of mineral transport or trade; iv) other gross human rights violations and abuses such as widespread sexual violence on mine sites or in the course of mineral transport or trade; or v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide for the purposes of mineral transport or trade.
- e) What information is available to verify the downstream trade, such as authentic documents, transportation routes, licensing, cross-border transportation, and the presence of armed groups and/or public or private security forces?

**5. Know the conditions of export from conflict affected and high-risk areas**

- a) What was the point of export and have there been reports or are there suspicions of facilitation payments or other bribes paid at points of export to conceal or fraudulently misrepresent the mineral origin? What documents accompanied mineral export and have there been reports or are there suspicions of fraudulent documentation or inaccurately described declarations (on type of mineral, mineral quality, origin, weight, etc.)? What taxes, duties or other fees were paid on export and have there been reports or are there suspicions of under-declaration?
- b) How was export transportation coordinated and how was it carried out? Who are the transporters and have there been reports or are there suspicions of their engagement in corruption (facilitation payment, bribes, under-declarations, etc.)? How was export financing and insurance obtained?

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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# OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

Trade and investment in natural mineral resources hold great potential for generating income, growth and prosperity, sustaining livelihoods and fostering local development. However, a large share of these resources is located in conflict-affected and high-risk areas. In these areas, exploitation of natural mineral resources is significant and may contribute, directly or indirectly, to armed conflict, gross human rights violations and hinder economic and social development. The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* provides step-by-step management recommendations endorsed by governments for global responsible supply chains of minerals in order for companies to respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices. The Due Diligence Guidance may be used by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas, and is intended to cultivate transparent, conflict-free supply chains and sustainable corporate engagement in the minerals sector.